CHNG SIN POEY & SONS SDN. BHD. v. QUEK LIAN MENG

[O.C.J. (Syed Othman J.) September 9, 1976]

[Johor Bahru — Originating Motion No. 11 of 1976]

Land Law — Caveat — Non-compliance with form 19B, First schedule, National Land Code — Whether caveat could be amended — "Such order... as (the court) may think just" — Meaning of — National Land Code ss. 322 323, 324(1), 327, 329(2).

The applicant in this case sought to remove the caveat lodged by the respondent on the applicant's land together with premises known as Nos. 60, 60A, 60B and 60C, Jalan Stulang, Johor. The land was charged to a bank in 1974. In September 1975 the applicant agreed to let premises 60 and 60A to the respondent subject to a tenancy agreement to be drawn up in terms, *inter alia*, that the tenancy shall be for 3 years with effect from November 1, 1975 with an option for another 2 years, and with a monthly rental of $500 for the ground floor (No. 60) and $250 for the first floor (60A). The respondent paid a deposit and went into occupation. In February, 1976 another company entered into an agreement with the applicant to purchase the whole property for $152,000 subject to existing tenancies, and paid a deposit of 10%. On April 25, 1976 the applicant received from the Registrar a notification of entry of the caveat (Form 19A) binding the land itself. On April 26, 1976 the applicant applied to the Registrar for the removal of the caveat. The respondent's caveat had, on the latter's application, been extended by the High Court to October 31, 1980. In the respondent's application the words omitted were "to bind — the land itself/the particular interest described in the said schedule."

Held, dismissing the application and allowing an adjournment to consider amendment of the caveat (1) the expression "such order... as it may think just" appearing in section 327(1) of the National Land Code envisaged a power to make a variety of orders in conformity with what was right and fair and should carry with it the power to vary or amend an existing endorsement of a caveat if the court considered such endorsement was not right and fair. To say that the expression should be confined to a choice between "removing" and "not removing" a caveat was to restrict the intent;

(2) although under section 324(1) of the National Land Code the Registrar was not required to enquire into the validity of the claim, this did not mean that he could not reject an application for entry of a caveat when it did not comply with the substance of the form, or, as in this case, when the application did not specify whether the caveat was to bind the land itself or a particular interest.

Cases referred to:-

(1) *Wong Yok Wan* v. *Loo Pok Chee* [1975] 1 M.L.J. 156.
(2) *Pok Kew Chai* v. *Yeoh Thian Seng & Anor.* [1975] 1 M.L.J. 220.
(3) *Vangedaselam* v. *Mahadevan & Anor.* [1976] 2 M.L.J. 161.

ORIGINATING MOTION.

W.D. Moses for the applicant.

Lim Seng Bok for the respondent.

Cur. Adv. Vult.

Syed Othman J.: The applicant seeks to remove the caveat lodged by the respondent on the applicant's land held under Grant 24437 Lot No. 8935 in the Township of Johor Bahru and measuring 1,741 square feet together with premises known as Nos. 60, 60A, 60B and 60C, Jalan Stulang, District of Johor Bahru. The land was charged to a bank in 1974. In September 1975 the applicant agreed to let premises 60 and 60A to the respondent subject to a tenancy agreement to be drawn up in terms, *inter alia*, that the tenancy shall be for 3 years with effect from November 1, 1975 with an option for another 2 years, and that the monthly rent for the ground floor (No. 60) shall be $500 and for the first floor (No. 60A) $250. A deposit was paid and the respondent went into occupation.

In February 1976 another company entered into an agreement with the applicant to purchase the whole property for $152,000, subject to existing tenancies, and paid a deposit of 10%.

On April 25, 1976 the applicant received from the Registrar of Titles (Registrar) a notification of entry of the caveat (Form 19A) binding the land itself. On April 26, 1976 the applicant applied to the Registrar for removal of the caveat. But on application by the respondent the High Court on May 25, 1976 extended the caveat for a period up to 31st day of October, 1980.

Encik Moses, for the applicant, concedes that the respondent would have been entitled to a caveat on the particular interest i.e. the right to a lease of premises 60 and 60A, but he argues, since the caveat binds the land itself and not merely the particular interest, it is null and void and should be removed. He relies on two authorities: *Wong Yok Wan* v. *Loo Pok Chee*[1] and *Pok Kew Chai* v. *Yeoh Thian Seng & Anor.*[2] where the High Court at Seremban held that if a caveat is larger than the caveator's interest, then it is null and void and must be removed.

Encik Lim Seng Bok, for the respondent, says that as the land office has provided no machinery for registration of subsidiary titles for strata ownership in a multi-storeyed building, it has not been possible to caveat the particular interest.

There is no need for me to deal with what the learned judges said concerning the caveats in the Seremban cases. Tun Suffian L.P. in *Vangedaselam* v. *Mahadevan & Anor.*[3] in overruling the decisions said:

"With deepest respect I do not agree with Ajaib Singh J. or Hashim Yeop A. Sani J. on their construction of the National Land Code. I am of the opinion that under that Code also, you either caveat the whole land or not at all, and that if you claim a registrable interest in a portion you may caveat the whole land, provided that you expressly limit the effect of your caveat to protect only your claim."

Dealing with sections 322, 323 and 324 of the National Land Code (the Code), he said:

"With respect, my construction of these provisions of the National Land Code is as follows. A person who claims a registrable interest in land wishes to enter a private caveat. He must according to sub-section (2) of section 323 apply in Form 19B. In that form (verified by statutory declaration) he must specify the nature of the claim on which his application is based and whether the caveat is to be expressed to bind the land itself or a *particular interest only*. This means that if the registrable interest he claims relates to the whole land he should say so. With reference to the words italicized, in view of the phrase 'upon the person... in whom that interest is for the time being vested..." in sub-section (3) of section 324, I think they mean the particular interest of the registered proprietor, not as Ajaib Singh J. seemed to think, the particular interest of the caveator. In the ordinary case a proprietor owns all the interest in his land, but this interest is divisible; thus in the instant case the caveatees owned (a) all the interest in Merah Estate excluding the portion claimed by the caveator. The caveator, as it happens, claims not the caveatees' interest in the entire estate, but only their interest in the portion in question. In other words he claims a particular interest in the land. In that event when applying for entry of a caveat he should so state in Form 19B in paragraph 1, and in paragraph 2 he should give the grounds of his claim.

(He should not claim a caveat to be expressed to bind the land itself.) He should also cause to be inserted in Form 19A a description of the particular interest he claims and a description of the effect of the caveat."

In the present case, the application of the respondent to some extent follows Form 19B of the Code, (which I have called to be produced) and reads as follows:

"APPLICATION FOR ENTRY OF A PRIVATE CAVEAT

The Commissioner of Lands & Mines,

Johor Bahru.

I, QUEK LIAN SENG @ QUEK YIN MENG (NRIC NO. 0685129) of Johore Trading Company, No. 60, Jalan Stulang Darat, Johore Bahru, Malaysia — hereby apply for the entry of a Caveat upon the title to the land described in the schedule below to be expressed.

2. The grounds of my claim to the land are:—

(a) On the 1st day of November, 1975 Messrs. Chng Sin Poey & Sons Sendirian Berhad granted and I took a 5 year lease of all that premises known as No. 60, and 60-A, Jalan Stulang Darat, Johore Bahru at a monthly rent of $500 and $250 per month respectively.

(b) I paid Messrs. Chng Sin Poey & Sons Sdn. Bhd. a sum of $2,000 as deposit for the Tenancy.

(c) The said 5 year lease was to be evidenced by a Tenancy agreement to be signed but to date Messrs Chng Sin Poey & Sons Sdn. Bhd. has failed to enter into a written agreement evidencing the above lease.

(d) The address of Messrs Chng Sin Poey & Sons Sdn. Bhd. is No. 3 Jalan Ariffin, Johore Bahru, Johore.

(e) I now wish to protect my interest in the said land as I am granted a 5 year lease.

(f) To prevent any further dealings of the said land by the Vendor or any third party I hereby lodge the caveat."

The first paragraph of the application does not strictly follow Form 19B in the First Schedule to the code, which is as follows.

"I....

of....

hereby apply for the entry of a caveat upon the title to the land described in the schedule below; to be expressed to bind —

the land itself/the particular interest described in the said schedule."

It will be noted that in the respondent's application the words omitted are "to bind — the land itself/ the particular interest described in the said schedule." (The caveator to delete whichever is inapplicable.) It must be said of this application that although under section 324(1) of the Code the Registrar is not required to enquire into the validity of the claim, this does not mean that he cannot reject an application for entry of a caveat when it does not comply with the substance of the form, or, as in this case, when the application does not specify whether the caveat is to bind the land itself or a particular interest. If the Registrar had doubts he should have made enquiries from the respondent's solicitors. In any case, whatever may be said of the wording of the grounds in the application, the intent is clear; it is not to bind the land itself; it is to protect the respondent's claim to a registrable lease not exceeding 5 years on premises 60 and 60A. Since the Registrar accepted the application and endorsed the caveat (which the court then extended) I feel that I have to deal with the matter as it stands.

The notification, Form 19A, (in Malay) served by the Registrar, as attached to the applicant's affidavit, rendered in English, reads as follows: —

"NOTICE OF THE ENTRY OF A CAVEAT

To Chng Sin Poey & Sons Sdn. Bhd., of No. 3, Jalan Ariffin, Johore Bahru, proprietor of the land described in the schedule below:

This is to inform you that, in exercise of the powers conferred by section 324 I have this day entered, upon the register document of title to the said land —

(b) a Private Caveat Vol. 44 Fol. 48 bth. 4.476, on the application of —

Quek Lian Meng @ Quek Yik Meng of Johore Trading Co. No. 60 Jalan Stulang Darat, Johore Bahru.

This caveat is expressed to bind

the land itself; and

the effect thereof —

as stipulated under section 322 NLC.

Dated this 25th day of April, 1976.

Land Office seal.

Sgd.
Registrar
Negeri Johor.

*SCHEDULE OF LAND *AND INTEREST*

Town/ Village Mukim	Lot/ parcel/ L.O. No.	Description and No. of Title	Share of land (if any)	Registered No. of lease/ sub lease (if any)	Registered No. of Charge (if any)
(1)	(2)	(3)	(4)	(5)	(6)
Bandar	Lot 8955	Grant 24437	All	Nil	Pres. 7851/ 74 Vol. 195 Fol. 158"

The notification, which must be taken to follow the endorsement in the register document of title, does not therefore reflect the respondent's application.

Section 324 of the Code provides:

"324. (1) The Registrar shall note on any application under section 323 the time at which it was received (being, in the case of any application sent by post, the time at which it was withdrawn from its cover and, subject to sub-section (2) of section 329, shall as soon as may be thereafter (and without being concerned to enquire into the validity of the claim on which it is based) give effect thereto by entering the caveat applied for in the manner provided by sub-section (2).

(2) The entry of any private caveat shall be effected by the endorsement on the register document of title, under the hand and seal of the Registrar, of the words 'Private Caveat', together with a statement specifying —

(a) whether the caveat binds the land itself, or a particular interest therein only;

(b) the person or body on whose application it was entered;

(c) the time from which it is effective (being the time of receipt of the application; as noted there on pursuant to sub-section (1); and

(d) the reference under which the application is filed.

(3) As soon as may be after the entry of any such caveat, the Registrar shall serve a notification in Form 19A upon the proprietor of the land bound thereby or, in the case of a caveat binding a particular interest only, upon the person or body in whom that interest is for the time being vested."

Under sub-section (1) the duty is on the Registrar to give effect to the application by entering the caveat applied for in the manner laid down in sub-section (2).

Under sub-section (3) the duty is also on the Registrar as to the issue of Form 19A. The caveator does not appear to have any duty in these matters.

In the case here, an error has occurred in the endorsement of the caveat which cannot be attributed solely to the respondent. Now the applicant's side agrees that the respondent is entitled to caveat the particular interest; the respondent in fact makes no claim on premises other than 60 and 60A. It would not be fair to the applicant to allow the caveat to remain as it is. Neither would it be fair to the respondent if it should be removed. Further, if it was removed, the respondent would be precluded from entering a further caveat based on the like claim. Section 329(2) of the Code reads:

"Where the court has ordered the removal of any private caveat under section 327, or has refused an application under sub-section (2) of section 326 for an extension of time with respect to any such caveat, the Registrar shall not entertain any application for the entry of a further caveat in respect of the land or interest in question if it is based on the like claim as that on which the former one was based."

The situation clearly requires the court to take a middle course. The only way to accommodate both parties is to amend the endorsement. I have not been able to trace any authority here where the court has amended the endorsement of a caveat.

Francis on Torren's Title of Australia Vol. 1 at page 352 has this to say on "amendment of a caveat":

"No provision is made by any of the enactments for the amendment of a private caveat once the same has been lodged. Queensland section 90 empowers the Supreme Court or any judge thereof, on the hearing of an application for the removal of a caveat, 'to make such order in the premises either *ex parte* or otherwise as to the said court or judge shall seem fit', and similar provisions are found in N.S.W. section 97(3), Vic. section 90(3), S.A. section 191(iv) and (vii), W.A. section 138, Tas. section 83(3), A.C.T. section 105(3) and N.S. section 143(2). Nevertheless it has been held in Queensland that there is no power under The Real Property Acts 1961 to 1963 (Qld), whereby a caveat can be amended by leave of the court. 'Dr. Kerr in summarising the principles on which the court will act on an application for removal of a caveat, stated that: 'If the caveat is irregular, then the court should either remove the caveat or amend it.' He does not, however, cite any authority for his proposition, and in the light of the Qld. decision referred to above, it is respectfully submitted that Dr. Kerr's proposal is not correct."

Section 327(1) of our Code reads:

"Any person or body aggrieved by the existence of a private caveat may at any time apply to the court for an order for its removal, and the court (acting, if the circumstances so require, *ex parte*) may make such order on the application as it may think just."

It will be seen that in the Queensland provision the crucial words relating to the power of the court in dealing with an application for removal of a caveat are "to make such order ... as ... shall seem fit." In our provision they are "may make such order ... as it may think just". I cannot see much difference in the effect of the two expressions. In any case, it is clear that the court is not simply given power to choose either to remove or not to remove the caveat. With respect to the Queensland authority and the learned author, I feel that the opinion of Dr. Kerr is more in harmony with the construction of the words. To my mind the expression "such order ... as it may think just" appearing in our provision envisages a power to make a variety of orders in comformity with what is right and fair and should carry with it the power to vary or amend an existing endorsement of a caveat if the court considers such endorsement is not right and fair. To say that the expression should be confined to a choice between "removing" and "not removing" a caveat is to restrict the intent.

In the case here, I am afraid I cannot make any amendment right now as the exact nature of the endorsement is not before me. I shall adjourn this matter to chambers to verify with the parties the nature of endorsement and to consider the proper amendment to be made.

Before I leave I wish to remind an applicant for removal of a caveat or for its extension, it is advisable that the application should be accompanied by Forms 19A, and 19B and the endorsement referred to in section 324 of the Code.

The application here is dismissed. As agreed between the parties there shall be no order as to costs.

NOTE: This matter came up in chambers on September 27, 1976. Both counsel agree that endorsement in the register document of title to be amended by deleting the existing endorsement and by substituting therefor the following —

"Private caveat to bind the particular interest i.e. right to a registrable lease not exceeding 5 years (1st October, 1975 to 31st October, 1980) to be executed by the proprietor and caveator as agreed upon in respect of premises 60 and 60A."

I am grateful to Encik Moses for having drawn my attention to an article by *R.R. Sethu* on "Private Caveats — Some Developments" in INSAF, April 1976 issue. Extracts in pages 20-21 read as follows: —

"... section 327 of NLC which provides '... and the court (...) may make such order on the application as it may think just.'

This point arose for decision in *Queensland Estates* v. *Co-Ownership Land* (1969) Qld. R. 150. The full court there held that the power conferred by section 109 of the Real Property Acts to make such order 'as the court or a judge shall seem fit' includes a power to make such order as the court think just, and the court could therefore order a caveat to be amended so as to protect the rights actually claimed by the caveator.

Hart J. speaking for the Full Court dealt with the conflict of Australian authorities .....

'I am in respectful agreement with the Full Court of Victoria in thinking that the power to make such order as it may seem fit means such order as the court thinks just. I also think the similar words in Queensland section 99 should be given a similar meaning. It does not seem in general just that rights should be lost by a party because of some technical mistake either on his own part or on that of his advisers'."

Application dismissed.

Solicitors: *T.S. Chong & Co.; Yeow & Chin.*